Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

	)	
COMMON CARRIER BUREAU SEEKS	)	
COMMENT ON VERIZON'S REQUEST TO	)	CC Docket No. 98- 184
COUNT INVESTMENT IN NORTHPOINT	)	
TOWARD OUT- OF- REGION MERGER	)	
OBLIGATION.		

COMMENTS BY TELETRUTH

Submitted By

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STATEMENT OF INTEREST

TeleTruth is a national, independent, broad-based coalition of residential and business customers, small businesses and large corporations, industry experts and consultants, lawyers, Internet Providers and telco competitors. The organization was created to defend the public interests in telecommunication and broadband issues, educate and inform the public to combat monopoly control of critical telecommunications infrastructure, promote fairness, innovation and competition. and accelerate (encourage) the deployment of advanced networks and new forms of communications.

Bruce Kushnick, is Chairman of TeleTruth and Executive Director of New Networks Institute, a market research and consulting firm, focusing on telecom and broadband issues for the public interest. In 1992 New Networks Institute, (NNI) was created to investigate, on a totally independent impartial basis, how the break-up of AT&T and the creation of Baby Bells had impacted subscribers. Since that time we have completed the most comprehensive research project ever undertaken, helped to initiate Class Action suits in specific states, has filed comments and complaints with the FCC, IRS, and other government agencies in the hopes of creating change that benefit the telephone customer. In 2000, New Networks Institute and TeleTruth associates proposed a new piece of Federal legislation --- the "Broadband Bill of Rights". New Networks is independently funded through research and consulting projects and the sales of books and research reports and surveys.

DISCUSSION

SUMMARY: The FCC is wasting its time considering this latest effort by Verizon to obfuscate its failure to live up to its clear and binding merger agreement commitment.

DO NOT allow Verizon to use and count non-existent competitive NorthPoint services to fulfill part of their GTE-BA Merger Conditions This would render the Agreement meaningless and set a bad precedent for industry/commission negotiations and agreements going forward.

It is widely known within telecom and broadband industry circles that Verizon's own actions and decisions contributed to the demise of Northpoint, a competitive local phone company offering DSL products. Northpoint's failure cost its investors (and commercial lenders) hundreds of millions of dollars and allegations regarding Verizon's complicity in Northpoint's failure engendered several law suits. Verizon had originally cut a deal with Northpoint to help fund the company's growing SDSL business and they planned to eventually merge. Verizon then pulled the plug on Northpoint, leaving company management in both serious financial trouble and lagging in the marketplace since it had postponed several market development initiatives actions for months while focusing its attention on preparing for a merger with Verizon.

Verizon 'terminated the agreement" as its own documents indicate clearly.

> "ITEM 4. Purpose of Transaction. On November 29, 2000, Verizon Communications terminated the Agreement and Plan of Merger, dated as of August 7, 2000 (the "Merger Agreement"), by and among Verizon Communications, the Issuer, Verizon Ventures I Inc. and Verizon Ventures II Inc. as permitted under the Merger Agreement due to the occurrence of a Material Adverse Effect (as defined in the Merger Agreement) on the Issuer. Upon termination of the Merger Agreement, the covenants and agreements contained in the Voting and Lock-up Agreements, each dated as of August 7, 2000 (the "Voting Agreements"), with several principal stockholders and officers of the Issuer terminated." Schedule 13d (Amendment No. 2), November 29, 2000

Now Verizon is asserting that it should be allowed by the Commission to count the investment it made in Northpoint as the equivalent of the investment in out-of-region competitive local and advanced services it is obligated to make under the conditions of its merger agreement with GTE. ("On March 7, 2002, Verizon Communications, Inc. (Verizon) submitted a letter to the Common Carrier Bureau (Bureau) regarding its progress in satisfying Condition XVI (Out- of- Territory Competitive Entry) of the Bell Atlantic/ GTE Merger Conditions)

> "Condition XVI [of the Agreement] requires Verizon to spend a total of at least $500 million within 36 months of merger close "to provide services, including resale, that compete with traditional local telecommunications services offered by incumbent local exchange carriers or to provide Advanced Services to the mass market . . . outside the Bell Atlantic/ GTE Service Areas"

But it was for customers that the merger's public interest "conditions" were negotiated. And it is the customer's singular interest in results, not excuses, that suggests the most appropriate standard against which the Commission should evaluate the merits of Verizon's claim.

Clearly for customers, Verizon's investment in Northpoint's now defunct venture did not yield any benefits and therefore should not be considered as equivalent to, or a substitute for, the direct investment promised to gain approval for a combination with GTE. The members of TeleTruth and all the customers to whom the benefits of Verizon's entry into out-of-region local service competition were promised, are still waiting for results. Moreover, it is disingenuous for the management of Verizon to seek to reclassify some of Northpoint's investment as if it was their own, especially since Verizon's abrupt decision to abandon funding and merger discussions with Northpoint, contributed so much to the latter's failure.

September 6, 2000 Verizon press release.

> "Verizon's equity investment and debt financing will help NorthPoint maintain strong momentum as we move toward the close of our merger agreement," said Liz Fetter, NorthPoint president and CEO. "We will use our greater financial strength to expand our network, scale our business and enhance the broadband customer experience. We look forward to the completion of the merger and to delivering its many benefits to American consumers and businesses."
>
> "Of the total $800 million cash investment, $450 million will fund the new NorthPoint's capital expenditures and operations, and the remainder will go to NorthPoint shareholders who will receive approximately $2.50 per share at closing. "

And only three months later, Verizon pulls out. November 29, 2000.

> "Verizon said that given the material adverse changes, it has terminated the agreement as permitted under the terms of the contract."

The money that Verizon originally planned to put into Northpoint would have stabilized the company. Instead, Verizon's abrupt change of mind cost Northpoint investors hundreds of millions of dollars Northpoint's demise was a great hardship for its customers and ISP users.

And the $150 million that was spent on Northpoint? There is no evidence that it was used for the same kind of competitive service entry and development that Verizon had promised. For this reason alone, the Commission should reject Verizon's claim.

Conclusion -- Verizon should be held accountable for their failure to follow through with promised out-of-- region competition and entry initiatives. The Commission must not fail to enforce the terms (and intent) of its agreements. Not to do so would raise serious questions about its willingness and capacity to enforce agreements and regulations set in place to protect the public's interest.

As one industry observer, David Lesher, wrote on the Cybertelecom listserve:

> "It reminds me of the guy who murdered his parents and asked for mercy since he's an orphan...."